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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [REDACTED] 1925

No. [REDACTED] 187 >

GIRARD TRUST COMPANY, GEORGE STEVENSON,
WILLIAM R. VERNON, ET AL., ETC., APPELLANTS,

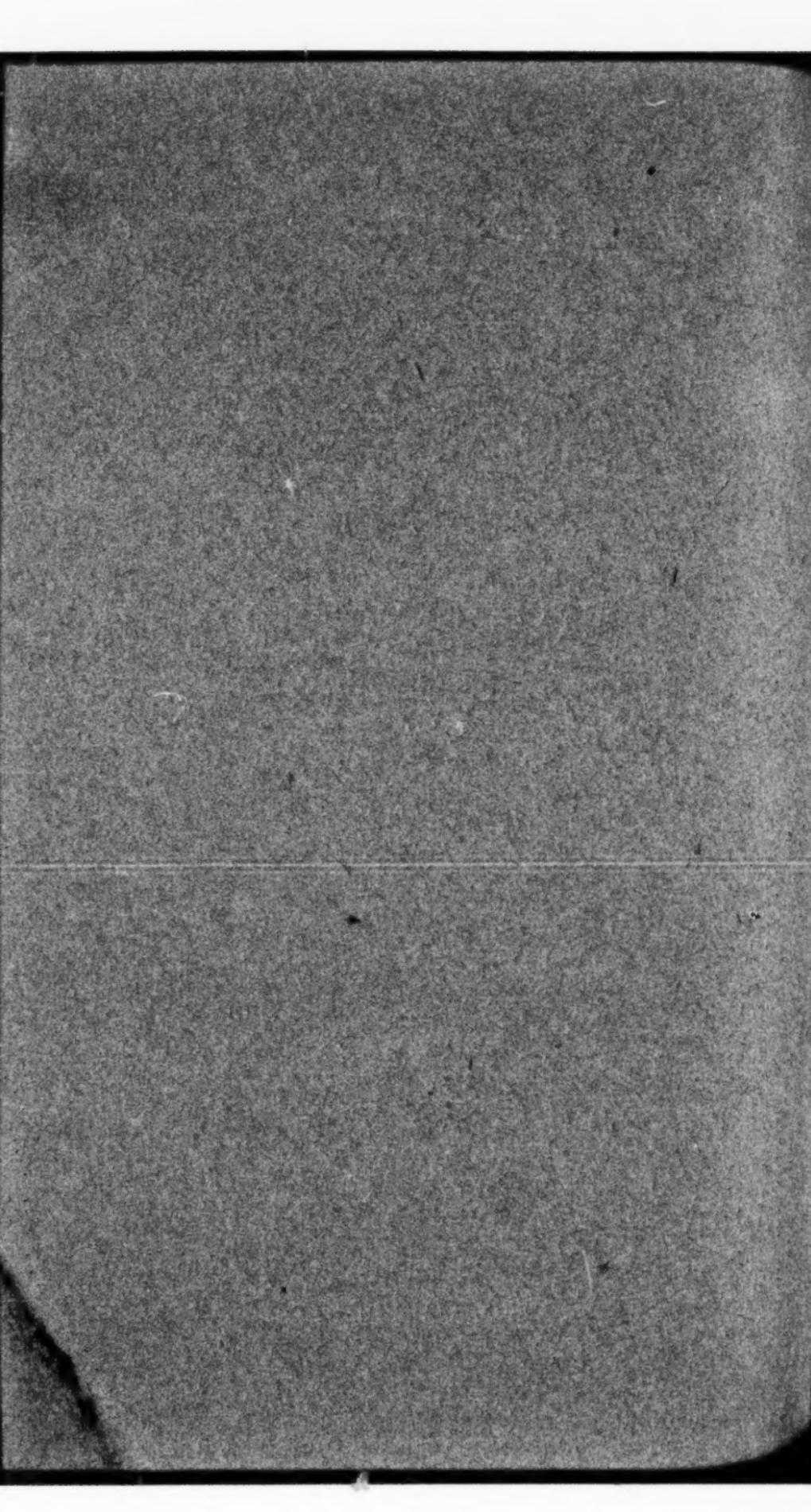
vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JULY 14, 1926

(\$0,000)



(80,505)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 540

GIRARD TRUST COMPANY, GEORGE STEVENSON,
WILLIAM R. VERNER, ET AL., ETC., APPELLANTS,

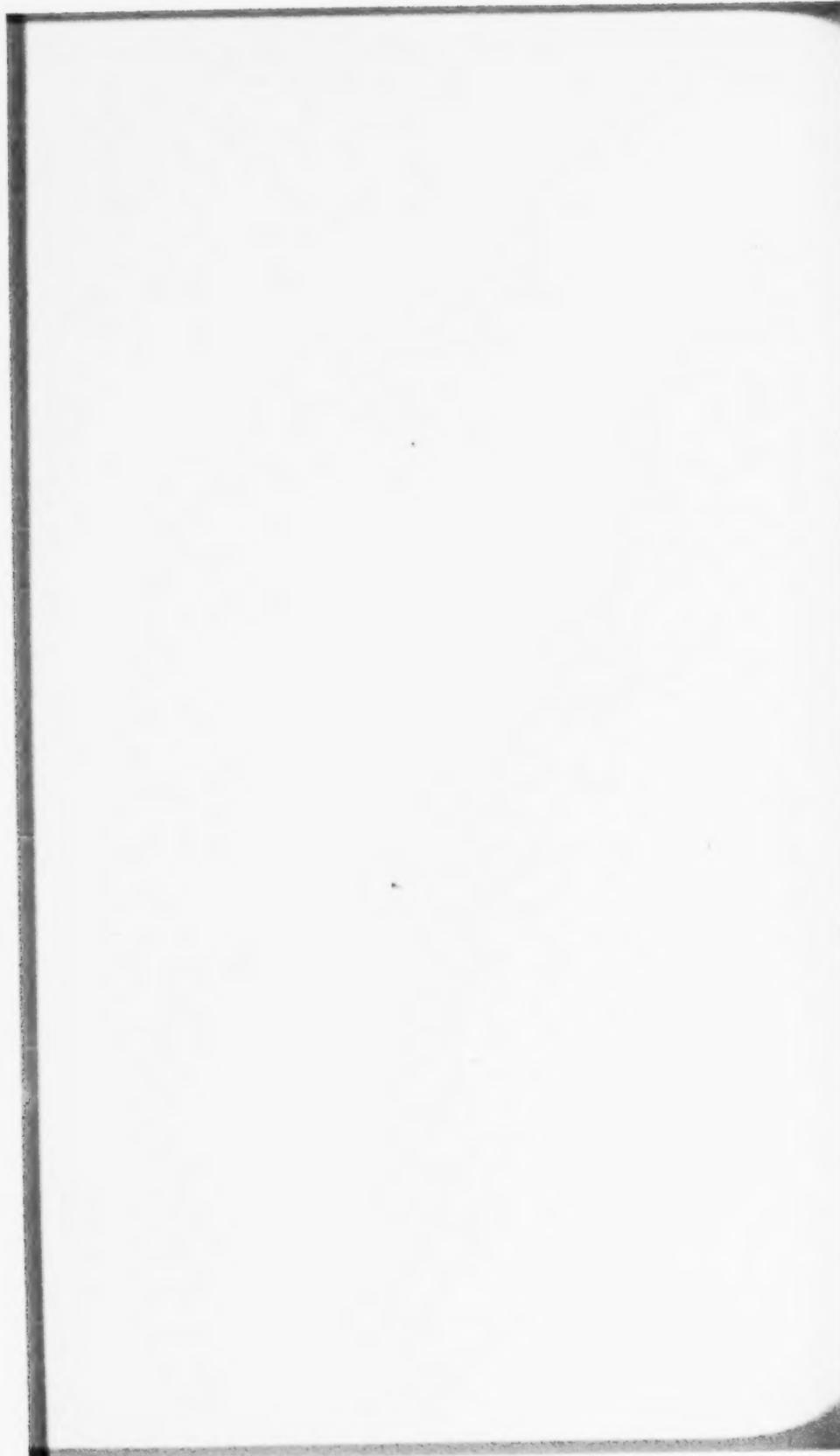
vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

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[fol. 1]

IN THE

COURT OF CLAIMS OF THE UNITED STATES

No. C-972

GIRARD TRUST COMPANY, a Corporation; GEORGE STEVENSON,
William R. Verner, and Robert Glendinning, in Their Capacity
as Trustees of the Estate of Alfred F. Moore, Deceased,

vs.

THE UNITED STATES OF AMERICA

I. PETITION—Filed August 11, 1923

To the Honorable Judges of said Court:

The claimants, Girard Trust Company, a corporation duly organized under the laws of the State of Pennsylvania, George Stevenson, William R. Verner, and Robert Glendinning in their capacity as trustees of the Estate of Alfred F. Moore, deceased, file this their petition in the above entitled cause and show this court and allege as follows:

[fol. 2]

I

The supposed excess profits tax upon the Estate of Alfred F. Moore, deceased, for 1917, as originally determined and assessed early in 1918, amounted to \$108,140.15, the full amount of which assessment was paid and satisfied on or about March 31, 1918, by the payment in advance to the Collector of Internal Revenue at Philadelphia of \$108,140.15 less the credit allowed under Section 1009 of the Revenue Act of 1917 (40 Stat. 326) for payment in advance of the time fixed by law for such payment, viz., June 15, 1918.

The claimants subsequently were advised that being the trustees of a trust estate they were not subject to excess profits tax under the Revenue Act of 1917, and on or about August 2, 1921, filed their claim for the refund of the entire tax of \$108,140.15 paid by the estate. Their claim for refund was allowed for \$107,372.36 by the Commissioner of Internal Revenue and under date of February 6, 1923, they received a certificate of overassessment for \$107,-372.36 with which was transmitted a check for \$112,864.53. The certificate stated that the amount refunded was \$107,372.36 and that there was included in the check interest on the refund from the date six months after the filing of the claim to the date of allowance amounting to \$5,492.17.

II

The said certificate of overassessment further stated that it was held that the Revenue Act of 1917 did not impose any excess profits tax upon income derived from a trade or business carried on by a bona fide trust.

III

The claimants, having paid and satisfied in full the original assessment of \$108,140.15, and having been held not subject to any tax whatsoever, were entitled to the refund of its full amount, and the [fol. 3] unpaid balance of \$767.79, with interest thereon from the date six months after the filing of their claim for refund, is justly due and owing to claimants by the United States.

IV

Section 1324(a) (3) of the Revenue Act of 1921 (42 Stat. 316) provides that, upon the allowance of such a claim for refund, interest shall be allowed and paid at the rate of $\frac{1}{2}$ of 1% per month to the date of such allowance from six months after the filing of such claim for refund.

V

Interest amounting to \$6,513.92 should therefore have been allowed and paid from February 2, 1922, to February 6, 1923, on the \$107,372.36 which has been refunded, whereas there has been paid to claimants on this account only \$5,492.17, leaving an unpaid balance of \$1,021.75 which is justly due and owing to claimants by the United States.

VI

The proposed income tax upon the Estate of Alfred F. Moore, deceased, for 1920 as originally determined and assessed early in 1921, amounted to \$196,202.61. On or about March 15, 1921, and on or about June 15, 1921, respectively, the first and second quarterly installments of such tax, each amounting to \$49,050.66, were paid to the Collector of Internal Revenue at Philadelphia, in each case under a specific protest setting forth in detail the basis of and reasons for such protest.

The claimants were advised that they were probably not subject to any income tax, or that if subject to a tax, its true amount was much smaller than had been assessed, and on or about August 2, 1921, filed their claim for the refund of the two quarterly installments aggregating \$98,101.32 already paid as above set forth and [fol. 4] their claim for the abatement of the two quarterly installments aggregating \$98,101.29 not yet paid. Their claim for refund was allowed in large part and their claim for abatement was allowed in its entirety by the Commissioner of Internal Revenue, and on February 20, 1923, they received by mail a certificate of

overassessment dated February 10, 1923, for \$182,538.72. The certificate stated that the amount refunded was \$84,416.02, that the amount credited against an outstanding unpaid additional assessment for another year was \$21.41, and that the amount abated was \$98,101.29. With the certificate was transmitted a check for \$84,416.02, the exact amount of the refund without interest.

VII

The said certificate of overassessment further stated that \$196,-202.61 was assessed, whereas \$13,663.89 was the correct tax liability.

VIII

Section 1324(a) (1) of the Revenue Act of 1921 (42 Stat. 316) provides that upon the allowance of a claim for refund or credit of a tax paid under a specific protest setting forth in detail the basis of and reasons for such protest, interest shall be allowed and paid at the rate of $\frac{1}{2}$ of 1% per month to the date of such allowance from the time when such tax was paid.

IX

Interest amounting to \$5,681.69 and \$3,568.15, respectively, should therefore have been allowed and paid on \$49,050.66 from March 15, 1921, to February 20, 1923, and on \$35,386.77 from June 15, 1921, to February 20, 1923, whereas there has not yet been paid to claimants on this amount any interest whatever. These amounts of \$5,681.69 and \$3,568.15 are therefore justly due and owing to claimants by the United States.

Claimants are advised and believe that the Commissioner of Internal Revenue eventually will pay claimants a portion of this interest, but they are further advised and believe that he will not pay to them the full amount of interest justly due and owing to claimants. Claimants hereby consent to the reduction of this claim at any time prior to final judgment by an amount equivalent to any amount paid to them in the future by the Commissioner of Internal Revenue on this account.

X

Claimants further represent that no assignment or transfer of this claim or any part thereof or interest therein has been made; that claimants are justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimants have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and that claimants believe the facts as stated in this petition to be true.

Claimants therefore pray judgment in their favor against the United States of America for the said sums of \$767.79, \$1,021.42, \$5,681.69, and \$3,568.15, a total of \$11,039.05 with such interest as is allowable by law.

Girard Trust Company, George Stevenson, William R. Verner, and Robert Glendinning, in their capacity as trustees of the *the* estate of Alfred F. Moore, deceased, by Girard Trust Company, (S.) A. A. Jackson, Vice-President.

[fol. 6] Jurat showing the foregoing was duly sworn to by A. A. Jackson omitted in printing.

[fol. 7] II. GENERAL TRAVERSE—Filed Oct. 11, 1923

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. ARGUMENT AND SUBMISSION OF CASE

On April 29, 1924, the case was argued on merits by Mr. James C. Peacock, for plaintiff.

On April 30, 1924, the argument was concluded by Mr. Chester A. Gwinn, for defendant, and it was thereupon ordered that the case be passed for two weeks. In the meantime parties to file an amended stipulation as to the facts.

On May 13, 1924, the case was argued and submitted on merits by Mr. James C. Peacock, for plaintiff, and by Mr. C. A. Gwinn, for defendant.

[fol. 8] IV. Findings of Fact, Conclusion of Law, and Memorandum by the Court—Entered May 19, 1924

This case having been heard by the Court of Claims upon a stipulation of the facts made between the parties, the agreement as to the facts in writing and signed by the plaintiffs' attorney, Mr. James Craig Peacock, and by Mr. Robert H. Lovett, Assistant Attorney General, the court adopts the said stipulation and sets it out as follows as and for its

FINDINGS OF FACT

I

The claimants, Girard Trust Company, a corporation duly organized under the laws of the State of Pennsylvania, George Stevenson, William R. Verner, and Robert Glendinning, brought this ac-

tion in their capacity as trustees of the estate of Alfred F. Moore, deceased.

II

The supposed excess profits tax upon the estate of Alfred F. Moore, deceased, for 1917, as originally determined and assessed early in 1918, amounted to \$108,140.15, which assessment was paid and satisfied by the plaintiffs on March 21, 1918, by the payment in advance to the collector of internal revenue at Philadelphia of \$107,372.36, being the said \$108,140.15 less the credit of \$767.79 allowed under section 1009 of the revenue act of 1917 (40 Stat. 326) for payment in advance of the time fixed by law for such payment, viz, June 15, 1918.

III

The plaintiffs subsequently were advised that being the trustees of a trust estate they were not subject to excess-profits tax under the revenue act of 1917, and on August 2, 1921, filed their claim for the refund of the entire tax of \$108,140.15. Their claim for refund was [fol. 9] allowed for \$107,372.36 by the Commissioner of Internal Revenue. Schedule Form 7777 Serial No. 3781 including this item was on December 9, 1922, approved by the Commissioner of Internal Revenue for transmission to the proper accounting officer for credit and refund. On February 7, 1923, the plaintiffs received by mail a certificate of over-assessment, dated February 6, 1923, for \$107,-372.36, with which was transmitted a check for \$112,864.53. The certificate stated that the amount refunded was \$107,372.36 and that there was included in the check interest on the refund from the date six months after filing of the claim to the date of allowance, amounting to \$5,492.17. The records of the Bureau of Internal Revenue show that interest actually was computed from February 2, 1922, to December 9, 1922.

IV

The proposed income tax upon the estate of Alfred F. Moore, deceased, for 1920 as originally returned and assessed early in 1921, amounted to \$196,202.61. On March 15, 1921, and on June 15, 1921, respectively, the first and second quarterly installments of such tax, each amounting to \$49,050.66, were paid to the collector of internal revenue at Philadelphia.

There was attached to the original return of claimants the following protest:

"NOTE.—Profit was made during the year 1920 upon sales of capital assets as set forth in block C above. This amount of \$349,-200.85 is included in the total net income and under regulations is returned for tax on Form 1040. As the taxpayer is advised that such sum is not taxable income, under the decision of Brewster v. Walsh—District Court for District of Connecticut made December 16, 1920—the report of the amount of such profit is made and tax paid thereon

only under protest, and only in compliance with the requirement of the foregoing form and the instructions thereon.

"Trustees Estate of Alfred F. Moore, Dec'd. George Stevenson, Trustee.

"March 11, 1921."

and both the March 15 and June 15 installments were paid thereunder.

The June 15 installment was also paid under the following additional notice which was transmitted to the collector with the check with which it was paid:

"In view of the joint investigation by accountants of both Government and trustees now in progress, with the agreed object of correcting certain figures, especially those relating to depreciation, believed to have been erroneously increased, as to the most important item and ignored as to another item, in the 1920 return of said trustees covering the sale of the three capital assets in that return set forth, estimating the total of said profits and the tax payable thereon out of the trust estate.

"Inasmuch as a second quarterly installment of \$49,050.60 based upon said estimate, is now (6-15-21) due, you are hereby notified that the accompanying payment thereof is made without prejudice [fol. 10] to the right of said trust estate to be hereafter relieved from or reimbursed for the payment of any tax upon the profits so returned in excess of the total tax, resulting from such final adjustment thereof as may be determined, either by agreement, or by the courts."

V

The plaintiffs were advised that they were probably not subject to any income tax, or that if subject to a tax, its true amount was much smaller than had been assessed, and on August 2, 1921, filed their claim for the refund of the two quarterly installments aggregating \$98,101.32 already paid as above set forth and their claim for the abatement of the two quarterly installments aggregating \$98,101.29 not yet paid. Their claim for refund was allowed in large part and their claim for abatement was allowed in its entirety by the Commissioner of Internal Revenue. Schedule Form 7777 Serial No. 3781 including this item was on December 9, 1922, approved by the Commissioner of Internal Revenue for transmission to the proper accounting officer for credit and refund. On February 20, 1923, the plaintiffs received by mail a certificate of overassessment dated February 10, 1923, for \$182,538.72.

The certificate stated that since \$196,202.61 was assessed, whereas \$13,663.89 was the correct tax liability, there had been an overassessment of \$182,538.72, and that the amount of this overassessment had been applied as follows:

Amount abated	\$98,101.29
Amount credited	21.41
Amount refunded	84,416.02

With the certificate was transmitted a check for \$84,416.02, the exact amount of the refund without interest.

VI

Since the filing of the petition in this case plaintiffs have received from J. G. Bright, Deputy Commissioner of Internal Revenue, a communication dated October 5, 1923, transmitting check for \$4,318.97 stated to be interest on the refund of \$84,416.02 and on the credit of \$21.41 from six months after filing to the date of allowance of the claim. The records of the Bureau of Internal Revenue show that interest actually was computed from February 2, 1922, to December 9, 1922.

VII

If the court concludes as a matter of law that under section 1324 (a) of the revenue act of 1921 interest shall be paid to the date when the refund is actually paid, then

- (a) Interest amounting to \$1,031.06 should also have been paid on \$107,372.36 from December 9, 1922, until February 6, 1923, and
- (b) Interest amounting to \$997.05 should also have been paid on \$84,437.43 from December 9, 1922, to February 20, 1923.

and judgment for plaintiffs for \$2,028.11 should therefore be entered on this account.

[fol. 11]

VIII

If the court concludes as a matter of law that the installments of the 1920 tax paid on March 15, 1921, and June 15, 1921, were both paid under a specific protest setting forth in detail the basis of and reasons for such protest within the meaning of section 1324 (a) (1) of the revenue act of 1921, and that such interest should be computed on \$45,634.68 from March 15, 1921, to February 2, 1922, and on \$38,802.75 from June 15, 1921, to February 2, 1922, then judgment for plaintiffs for \$3,889.67 should be entered on this account.

IX

If the court concludes as a matter of law that only the installment of 1920 tax which was paid on June 15, 1921, was paid under such a specific protest within the meaning of section 1324 (a) (1), and that such interest should be computed on \$38,802.75 from June 15, 1921, to February 2, 1922, then judgment for \$1,472.91 for plaintiffs should be entered on this account.

X

If the court concludes as a matter of law that the installments of the 1920 tax were both paid under such a specific protest within the meaning of section 1324 (a) (1), but that such interest should be

computed on \$35,388.77 from March 15, 1921, to February 2, 1922, and on \$49,050.66 from June 15, 1921, to February 2, 1922, then judgment for plaintiffs for \$3,735.95 should be entered on this account.

XI

If the court concludes as a matter of law that only the installment of 1920 tax which was paid on June 15, 1921, was paid under such a specific protest within the meaning of section 1324 (a) (1), but that such interest should be computed on \$49,050.66 from June 15, 1921, to February 2, 1922, then judgment for plaintiffs for \$1,861.91 should be entered on this account.

XII

The attached Exhibit A (Treasury Department, United States Internal Revenue Service, Form 7777, Schedule No. IT-A-3781) is a true excerpt from the schedule signed by the Commissioner of Internal Revenue on December 9, 1922, referred to in the agreed statement of facts in paragraph III and paragraph V.

XIII

The attached Exhibit B (Treasury Department, United States Internal Revenue Service, Form 7777A, Schedule No. IT-R-3781) is a true excerpt from a schedule signed by the Commissioner of Internal Revenue on January 16, 1923, containing, inter alia, the items of \$107,372.36 principal and \$5,492.17 interest, making a total of \$112,864.53, referred to in the agreed statement of facts in paragraphs II and III.

[fol. 12]

XIV

The attached Exhibit C (Treasury Department, United States Internal Revenue Service, Form 7777A, Schedule No. IT-R-3781) is a true excerpt from a schedule signed by the Commissioner of Internal Revenue on January 16, 1923, containing, inter alia, the item of \$84,416.02, referred to in the agreed statement of facts in paragraphs V and VI.

Said Exhibits A, B, and C mentioned in Findings XII, XIII, and XIV, being photostatic copies, are made an appendix to these findings as part thereof.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are not entitled to recover. It is therefore ordered that the petition of the plaintiffs be, and the same is hereby, dismissed. Judgment is awarded against the plaintiffs for costs in printing the record in this case, the amount thereof to be entered by the clerk and collected by him according to law.

computed on \$35,386.77 from March 15, 1921, to February 2, 1922, and on \$49,050.66 from June 15, 1921, to February 2, 1922, then judgment for plaintiffs for \$3,735.95 should be entered on this account.

XI

If the court concludes as a matter of law that only the installment of 1920 tax which was paid on June 15, 1921, was paid under such a specific protest within the meaning of section 1324 (a) (1), but that such interest should be computed on \$49,050.66 from June 15, 1921, to February 2, 1922, then judgment for plaintiffs for \$1,861.91 should be entered on this account.

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[fol. 12]

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The attached Exhibit C (Treasury Department, United States Internal Revenue Service, Form 7777A, Schedule No. IT-R-3781) is a true excerpt from a schedule signed by the Commissioner of Internal Revenue on January 16, 1923, containing, inter alia, the item of \$84,416.02, referred to in the agreed statement of facts in paragraphs V and VI.

Said Exhibits A, B, and C mentioned in Findings XII, XIII, and XIV, being photostatic copies, are made an appendix to these findings as part thereof.

CONCLUSION OF LAW

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MEMORANDUM

Three of the items are for interest, the principal sums having been paid with some interest. The plaintiffs claim they are entitled to more interest. The principal sums and interests as allowed by the commissioner having been paid to and accepted by the plaintiffs, they cannot maintain in this court an action against the Government for additional interest. See Stewart v. Barnes, 153 U. S. 456, 464.

(Here follow Exhibits A, B, and C, marked side folio pages 13, 14, and 15)

[fol. 16]

V. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the Nineteenth day of May, 1924, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendant, and do order and adjudge that the plaintiffs, as aforesaid, are not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and it is hereby dismissed.

By the Court.

VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On May 31, 1924, the plaintiffs filed a motion for a new trial.

On June 9, 1924, the court filed an order overruling plaintiffs' motion for a new trial.

VII. PETITION FOR AND ORDER ALLOWING APPEAL—Filed July 3, 1924

From the judgment rendered in the above-entitled cause on the 19th day of May, 1924, in favor of the United States, claimant- by its attorney, James Craig Peacock, on the 3rd day of July, 1924, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

James Craig Peacock, Attorney for Claimant.

Ordered: That the above application for appeal be allowed as prayed for.

Edward K. Campbell, Chief Justice.

July 5, 1924.

[fol. 17] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and memorandum by the court; of the judgment of the court; of the proceedings after entry of judgment; of the plaintiffs' application for an appeal and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Ninth day of July, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of Court of Claims.)

Endorsed on cover: File No. 30,505. Court of Claims. Term No. 540. Girard Trust Company, George Stevenson, William R. Verner, et al., etc., appellants, vs. The United States. Filed July 14th, 1924. File No. 30,505.

(4091)